

DAVID R. EBERHART (S.B. #195474)
deberhart@omm.com
SHARON M. BUNZEL (S.B. #181609)
sbunzel@omm.com
O'MELVENY & MYERS LLP
Two Embarcadero Center, 28th Floor
San Francisco, CA 94111
Telephone: (415) 984-8700

E-Filed 8/5/2011

Attorneys for Plaintiff
EBAY, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

| | | |
|----------------------------------|---|-----------------------------------|
| EBAY, INC., |) | Case No. CV 08-04052 JF PSG |
| |) | |
| Plaintiff, |) | STIPULATION AND [PROPOSED] |
| v. |) | ORDER CONTINUING CASE |
| |) | MANAGEMENT CONFERENCE |
| DIGITAL POINT SOLUTIONS, INC., |) | |
| SHAWN HOGAN, KESSLER'S FLYING |) | |
| CIRCUS, THUNDERWOOD HOLDINGS, |) | |
| INC. K TODD DUNNING, DUNNING |) | Judge: Hon. Jeremy Fogel |
| ENTERPRISE, INC., BRIAN DUNNING, |) | Dept.: Courtroom 3 |
| BRIANDUNNING.COM, and DOES 1-20, |) | |
| |) | |
| Defendants. |) | |

**THE PARTIES TO THE ABOVE-ENTITLED ACTION HEREBY STIPULATE
PURSUANT TO CIVIL LOCAL RULES 7-12 AND 16-2:**

1. Plaintiff alleges that Defendants, as participants in eBay's affiliate marketing program, engaged in cookie stuffing intended to defraud Plaintiff. Defendants deny Plaintiff's allegations.

2. Defendants Shawn Hogan and Brian Dunning were indicted on June 24, 2010. *United States v. Hogan*, CR 10-0495 JF (N.D. Cal. June 24, 2010); *United States v. Dunning*, CR 10-0494 JF (N.D. Cal. June 24, 2010). The indictments are based on the same alleged cookie

1 stuffing scheme at issue in this civil action.

2 3. On June 29, 2010, the United States filed a Notice of Related Case stating that
3 defendants Shawn Hogan and Brian Dunning in the instant action are alleged to have engaged in
4 the same cookie stuffing scheme that is the subject of the indictments. On July 7, 2010, the Court
5 issued an order finding that the instant civil action and the aforementioned criminal cases are
6 related.

7 4. Based on the foregoing, on July 28, 2010, the parties to this action stipulated and
8 moved that this civil action be stayed in its entirety as to all parties until further order by the
9 Court. The parties also stipulated and moved the Court to vacate the existing case management
10 dates, including but not limited to the fact and expert discovery cut-off dates, the pretrial
11 conference date, and the jury trial date. The parties stipulated and moved that a further case
12 management conference be set for February 11, 2011.

13 5. On August 3, 2010, the Court, pursuant to the parties' stipulation and motion,
14 stayed the case in its entirety as to all parties and vacated all existing case management dates.
15 The Court set a further case management conference for February 11, 2011 at 10:30 a.m.

16 6. On February 10, 2011, pursuant to the parties' stipulation, the Court continued the
17 case management conference scheduled for February 11, 2011 at 10:30 a.m. until August 12,
18 2011.

19 7. The criminal cases against defendants Shawn Hogan and Brian Dunning are
20 ongoing, and no trial dates have been set in those matters.

21 8. The parties stipulate and request that the Court continue the case management
22 conference scheduled for August 12, 2011 at 10:30 a.m. until January 13, 2012, or as otherwise
23 convenient for the Court. If either or both of the criminal cases are resolved prior to the
24 rescheduled case management conference, the parties shall timely inform the Court.

25 9. Notwithstanding the foregoing, the parties further stipulate that any party may
26 move at any time to lift the current stay or to set a case management conference before January
27 13, 2012.

28

1 **IT IS SO STIPULATED.**

2 DATED: July 29, 2011

DAVID R. EBERHART
SHARON M. BUNZEL
O'MELVENY & MYERS LLP

3
4
5 By: /s/ David R. Eberhart
David R. Eberhart

6 Attorneys for Plaintiff
7 EBAY, INC.

8 DATED: July 29, 2011

SEYAMACK KOURETSCHIAN
ROSS M. CAMPBELL
COAST LAW GROUP LLP

9
10 By: /s/ Ross M. Campbell
Ross M. Campbell

11
12 Attorneys for Defendants
13 SHAWN HOGAN and DIGITAL POINT
SOLUTIONS, INC.

14 DATED: July 29, 2011

LEO J. PRESIADO
RUS, MILIBAND & SMITH

15
16 By: /s/ Leo J. Presiado
Leo J. Presiado

17
18 Attorneys for Defendants
19 THUNDERWOOD HOLDINGS, INC., BRIAN
DUNNING and BRIANDUNNING.COM

20 DATED: July 29, 2011

PATRICK K. MCCLELLAN
LAW OFFICE OF PATRICK K. MCCLELLAN

21
22 By: /s/ Patrick K. McClellan
Patrick K. McClellan

23
24 Attorneys for Defendant
25 KESSLER's FLYING CIRCUS
26
27
28

1 DATED: July 29, 2011

TODD DUNNING

2
3 By: /s/ Todd Dunning
Todd Dunning

4 Pro Se

5 DATED: July 29, 2011

DUNNING ENTERPRISE, INC.

6
7 By: /s/ Todd Dunning
Todd Dunning

8
9
10 **ATTESTATION**

11 Pursuant to General Order No. 45X(B), I hereby attest that concurrence in the filing of this
12 document has been obtained from each of the above-listed signatories.

13 DATED: July 29, 2011


By: /s/ David R. Eberhart
David R. Eberhart

~~PROPOSED~~ ORDER

Pursuant to the foregoing stipulation, and good cause appearing therefor, IT IS HEREBY ORDERED that the case management conference scheduled for August 12, 2011 at 10:30 a.m. shall be continued until January 13, 2012 at 10:30 a.m. This stipulation is without prejudice to any party moving to lift the current stay before the continued case management conference should the circumstances so warrant. Any party may also move the Court to set a case management conference before January 13, 2012.

IT IS SO ORDERED.

Dated: 8/5/2011


The Honorable Jeremy Fogel
United States District Court Judge
Northern District of California

PROOF OF SERVICE

I, Michael O'Donnell, declare:

I am a resident of the State of California and over the age of eighteen years and not a party to the within action. My business address is Two Embarcadero Center, 28th Floor, California 94111. On August 1, 2011 the following documents were served via Email and U.S. Mail:

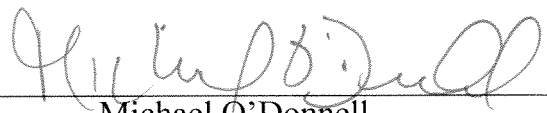
**STIPULATION AND [PROPOSED] ORDER CONTINUING CASE
MANAGEMENT CONFERENCE**

Todd Dunning
1 Stockbridge
Aliso Viejo, CA 92656
San Francisco, CA 94105
T: (949) 448-0889
karinedunning@yahoo.com
*on behalf of Defendants Todd
Dunning and Dunning Enterprise, Inc.*

Via Email and U.S. Mail

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on August 1, 2011 at San Francisco, California.



Michael O'Donnell